

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CARLOS ENRIQUE DELGADO PENA,)	
)	
Petitioner,)	
)	
v.)	No. 4:03 CV 1437 SNL
)	DDN
JOHN ASHCROFT, Attorney General of)	
the United States; and)	
TOM RIDGE, Secretary of the)	
Department of Homeland Security,)	
)	
Respondents.)	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This action is before the court on the motion of respondents John Ashcroft, Attorney General of the United States, and Michael Chertoff,¹ Secretary of Department of Homeland Security to dismiss (Doc. 12). The matter was referred to the undersigned United States Magistrate Judge for review and a recommended disposition in accordance with 28 U.S.C. § 636(b).

On November 17, 2003, Carlos Pena timely filed a pro se petition for a writ of habeas corpus in this court. (Doc. 8 at 2.) At the time of filing, Pena was in the custody of the Bureau of Immigration and Customs Enforcement (ICE) in Montgomery City, Missouri. (Doc. 11 at 1; Doc. 2.) On January 12, 2005, the Supreme Court issued a decision in Clark v. Martinez, 125 S. Ct. 716 (2005), addressing the detention of inadmissible and removable aliens situated similarly to Pena. The Court held that the detention provisions of Zadvydas v. Davis, 533 U.S. 678 (2001), apply to inadmissible and removable aliens, thus permitting the government to detain such individuals only as long as is reasonably necessary to effectuate removal. Id. at 722.

On January 31, 2005, the undersigned issued an order requiring the government to advise this court of the parole review decision regarding Pena's case in July 2004, and the government's position regarding the effect of Clark on Pena's case. (Doc. 9.) The government's response to

¹Michael Chertoff replaced Tom Ridge as the Secretary of Department of Homeland Security.

the court order notes that "the Office of Detention and Removal Operations for the Department of Homeland Security will provide custody reviews pursuant to 8 C.F.R. § 241.13 for all aliens detained post-final order for 180 days, with certain exceptions," and states that Pena would receive his review within the next thirty days. (Doc. 10 at 1.) The response further advises that Pena has been transferred to the Federal Correctional Institution in Texarkana, Texas, in the Eastern District of Texas. (Id. at 2.)

In addition, the government also moved to transfer, alleging a loss of personal jurisdiction by this court. (Doc. 11.) The government contends that the new custodian for habeas purposes is Nuria Prendes, the Field Office Director for ICE/DHS in the Eastern District of Texas. (Id. at 1.)


In their motion to dismiss, respondents notify the court that Pena received a custody review conducted by the Office of Detention and Removal Operations for the Department of Homeland Security. (Doc. 12, Attach. at 203.) Upon review, Pena received a "Release Notification" on March 14, 2005. (Id., Ex. A.) On March 24, 2005, Pena was subsequently given an "Order of Supervision and I-94 Parole," and is currently released from custody. (Id., Ex. B.). Therefore, petitioner is no longer in custody, a requirement for habeas corpus relief. 28 U.S.C. § 2241(c).

Whereupon,

IT IS HEREBY RECOMMENDED that the motion of respondents to dismiss (Doc. 12) be sustained, and that the petition of Carlos Enrique Delgado Pena for a writ of habeas corpus (Doc. 8) be denied as moot.

IT IS FURTHER RECOMMENDED that the motion of respondents to transfer (Doc. 11) be denied as moot.

The parties are advised that they have ten (10) days in which to file written objections to this Report and Recommendation.



DAVID D. NOCE

UNITED STATES MAGISTRATE JUDGE

Signed on May 4, 2005